

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JON D. GRUBER, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

RYAN R. GILBERTSON, et al.,

Defendants.

No. 1:16-cv-09727-JSR

Hon. Jed S. Rakoff

**DECLARATION OF ALEXANDRA C. EYNON IN SUPPORT OF PLAINTIFF'S
MOTION IN LIMINE TO PRECLUDE DEFENDANTS FROM
ASSERTING ADVICE-OF-COUNSEL DEFENSE**

ALEXANDRA C. EYNON declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a member in good standing of the bar of this Court. I am an associate at MoloLamken LLP, and I represent Plaintiff Jon D. Gruber individually and on behalf of all similarly situated in this matter. I submit this Declaration in support of Plaintiff's Motion in Limine To Preclude Defendants from Asserting Advice of Counsel Defense.

2. Attached as Exhibit 1 to this Declaration is a true and correct copy of the Written Board Action of The Board of Directors Effective November 13, 2008.

3. Attached as Exhibit 2 to this Declaration is a true and correct copy of excerpts of the deposition of Gabriel G. Claypool taken on January 23, 2020.

4. Attached as Exhibit 3 to this Declaration is a true and correct copy of excerpts of the SEC interview of Gabriel G. Claypool taken on November 20, 2015.

5. Attached as Exhibit 4 to this Declaration is a true and correct copy of Defendants' Statement of Facts dated January 5, 2022 and exchanged with Plaintiff in anticipation of the parties' Pretrial Consent Order as described in the Individual Practices of the Hon. Jed S. Rakoff.

6. Attached as Exhibit 5 to this Declaration is a true and correct copy of an excerpt of a Dakota Plains stock ledger created on January 26, 2015.

7. Attached as Exhibit 6 to this Declaration is a true and correct copy of excerpts of the deposition testimony of Michael L. Reger taken on October 21, 2019.

8. Attached as Exhibit 7 to this Declaration is a true and correct copy of excerpts of the deposition of Ryan R. Gilbertson taken on January 30, 2020.

9. Attached as Exhibit 8 to this Declaration is a true and correct copy of excerpts of the deposition of Craig M. McKenzie taken on August 20, 2019.

10. Attached as Exhibit 9 to this Declaration is a true and correct copy of a Dakota Plains Transport, Inc. Subscription Agreement for 12.00% Senior Promissory Notes.

11. Attached as Exhibit 10 to this Declaration is a true and correct copy of a May 2012 email chain including an email from Gabriel Claypool to Timothy Brady re: Senior, Junior & Consolidated Note History.

12. Attached as Exhibit 11 to this Declaration is a true and correct copy of the privilege log produced by counsel for Michael Reger in this case.

13. Attached as Exhibit 12 to this Declaration is a true and correct copy of Gabriel Claypool's redacted July 23, 2012 iPad notes.

14. Attached as Exhibit 13 to this Declaration is a true and correct copy of a March 1, 2013 email from Gabriel Claypool to Craig McKenzie and the attached Dakota Plains Shareholder Contact List.

15. Attached as Exhibit 14 to this Declaration is a true and correct copy of a March 21, 2014 letter from Dakota Plains to FINRA re: Review of Trading in Dakota Plains Holdings, Inc. (DAKP) FINRA Matter No: 20140399734.

16. Attached as Exhibit 15 to this Declaration is a true and correct copy of Defendant Gabriel G. Claypool's Redaction Log produced in this case dated January 13, 2020.

17. Attached as Exhibit 16 to this Declaration is a true and correct copy of Gabriel Claypool's redacted October 20, 2011 handwritten notes.

18. Attached as Exhibit 17 to this Declaration is a true and correct copy of Gabriel Claypool's redacted May 25, 2012 iPad notes.

19. Attached as Exhibit 18 to this Declaration is a true and correct copy of a June 19, 2013 McKenna Long & Aldridge presentation.

20. Attached as Exhibit 19 to this Declaration is a true and correct copy of Gabriel Claypool's redacted November 7, 2013 iPad notes.

21. Attached as Exhibit 20 to this Declaration is a true and correct copy of the Baker Hostetler Schedule of Inadvertently Produced Documents produced in this case.

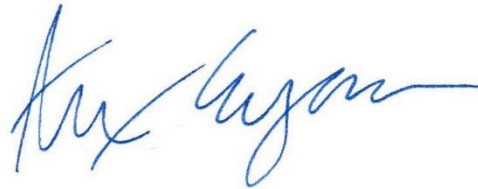
22. Attached as Exhibit 21 to this Declaration is a true and correct copy of an April 18, 2013 letter from counsel for Dakota Plains shareholders to Faegre Baker Daniels, LLP and the Dakota Plains board.

23. Attached as Exhibit 22 to this Declaration is a true and correct copy of excerpts of the deposition of James L. Thornton taken on August 28, 2019.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: January 17, 2022

New York, New York

A handwritten signature in blue ink, appearing to read "Alex Eynon", is written above a horizontal line.

Alexandra C. Eynon